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Federal Communications Commission

DA 93-774

FCC MAIL SECTION
Federal Communications Commission
Washington, D.C. 20554

JUL 9 11 53 AM '93

MM Docket No. 93-201

DISPATCHED BY
In the Matter of

Amendment of Section 73.202(b) RM-8213
Table of Allotments, RM-8252
FM Broadcast Stations.
(Walla Walla and Waitsburg,
Washington)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 24, 1993;

Released: July 8, 1993

Comment Date: August 30, 1993

Reply Comment Date: September 14, 1993

By the Chief, Allocations Branch:

1. The Commission has before it two mutually exclusive petitions for rule making. The first petition was filed by Walla Walla Christian Broadcasters ("WWCB"), proposing the allotment of Channels 256A and 270A at Walla Walla, Washington, as the community's fifth and sixth local commercial FM transmission services.¹ The second petition was filed by Brett E. Miller ("Miller") proposing the allotment of Channel 270C3 at Waitsburg, Washington, as its first local aural transmission service.² Both parties expressed their intention to apply for the channels, if allotted to their respective communities.

2. The proposals are mutually exclusive because the distance between Channel 270A at Walla Walla and Channel 270C3 at Waitsburg is less than the 142 kilometers (88.3 miles) required for co-channel allotments. Therefore, the channel can be allotted to only one of the communities in

compliance with the minimum distance separation requirements of Section 73.202 of the Commission's Rules. Our engineering analysis has determined that both Channels 256A and 270A can be allotted to Walla Walla in compliance with the Commission's minimum distance separation requirements at the same reference coordinates without the imposition of site a restriction.³ Additionally, Channel 270C3 can be allotted to Waitsburg with a site restriction of 2.2 kilometers (1.4 miles) southwest to avoid a short-spacing to Station KTSL, Channel 270C3, Medical Lake, Washington.⁴ Since Waitsburg is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been requested. We shall provide the proponents an opportunity to demonstrate in comments which community should receive the requested allotments. In this regard the parties should be guided by the allotment criteria set forth in *Revision of the FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

3. In view of the above, we believe it would serve the public interest to solicit comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
OPTION I		
Walla Walla, Washington	227C1, 239C, 246C, 264C3 ⁵	227C1, 239C, 246C, 256A 264C3, 270A
OPTION II		
Waitsburg, Washington	--	270C3
OPTION III		
Walla Walla, Washington	227C1, 239C 246C, 264C3	227C1, 239C 246C, 256A, 264C3
Waitsburg, Washington	--	270C3

¹ We note that in markets with fewer than 15 stations the "less than 50 percent" standard permits ownership of up to three stations, provided all three stations are not of the same service. However, pursuant to the new local rules, no more than two of those three stations may be in the same service. Accordingly, since Walla Walla has less than 15 local services, WWCB is eligible to apply for two FM channels. See *Revision of Radio Rules and Policies (Memorandum Opinion and Order)*, 7 FCC Rcd 6387 (1992).

² Although Miller's request indicates that the original copy of his proposal was signed, he failed to include an affidavit verifying that the statements contained in his petition were accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any documentation filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52

regarding subscription and verification. Miller is requested to rectify this omission in his comments.

³ The coordinates for Channels 256A and 270A at Walla Walla are North Latitude 46-04-12 and West Longitude 118-19-48.

⁴ The coordinates for Channel 270C3 at Waitsburg are North Latitude 46-15-10 and West Longitude 118-09-56.

⁵ We note that the FM Table of Allotments erroneously reflects Channel 265A at Walla Walla. In *Report and Order*, MM Docket No. 87-90, 2 FCC Rcd 6280 (1987), an upgrade was granted to Station KHSS(FM) to substitute Channel 264C2 for Channel 265A at Walla Walla. Accordingly, Channel 265A should have been removed from the FM Table of Allotments. Station KHSS(FM) subsequently filed an application for and was granted a construction permit for a Class C3 facility which is reflected in the Table. Therefore, we will make the editorial change of removing Channel 265A in the context of this proceeding. Since the correction is editorial in nature, a public notice and comment proceeding is unnecessary. See 5 USC 553(b)(A) and (B).

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **August 30, 1993**, and reply comments on or before **September 14, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultants, as follows:

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(Counsel for WWCB)

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(Petitioner for
Waitsburg, WA)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.